COMMENTS OF THE PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS, THE PENNSYLVANIA MUNICIPAL LEAGUE, THE PENNSYLVANIA STATE ASSOCIATION OF BOROUGHS, THE PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP COMMISSIONERS, THE CITY OF PHILADELPHIA, THE CITY OF PITTSBURGH, THE CITY OF LANCASTER, THE CITY OF LOCK HAVEN, THE CITY OF WARREN, THE CITY OF ALTOONA, THE MUNICIPALITY OF MONROEVILLE, THE TOWN OF BLOOMSBURG, THE TOWNSHIP OF BERN, THE TOWNSHIP OF RICHLAND (ALLEGHENY COUNTY), THE TOWNSHIP OF LOWER ALLEN, THE TOWNSHIP OF WILKINS, THE BOROUGH OF CARLISLE, THE BOROUGH OF HELLERTOWN, AND THE BOROUGH OF SELINSGROVE

TO THE FEDERAL COMMUNICATIONS COMMISSION'S REQUEST FOR COMMENTS ON STREAMLINING DEPLOYMENT OF SMALL CELL INFRASTRUCTURE BY IMPROVING WIRELESS FACILITIES SITING PROCEDURES; MOBILITIE, LLC PETITION FOR DECLARATORY RULING

WT DOCKET NO. 16-421

MARCH 8, 2017

The following comments are respectfully submitted to the Federal Communications Commission, in response to WT Document Number 16-421, on behalf of the following Pennsylvania entities: the Pennsylvania State Association of Boroughs, the Pennsylvania Municipal League, the Pennsylvania State Association of Township Supervisors, the Pennsylvania State Association of Township Commissioners, the City of Philadelphia, the City of Pittsburgh, the City of Lancaster, the City of Lock Haven, the City of Warren, the City of Altoona, the Municipality of Monroeville, the Town of Bloomsburg, the Township of Bern, the Township of Richland (Allegheny County), the Township of Lower Allen, the Township of Wilkins, the Borough of Carlisle, the Borough of Hellertown, and the Borough of Selinsgrove (collectively, the "Commenters").

The Pennsylvania State Association of Township Supervisors ("PSATS") is a non-profit association that has been providing training, educational, and other member services to officials for over 1,400 townships of the second class throughout the Commonwealth of Pennsylvania (hereinafter the "Commonwealth") since 1921. PSATS also advocates for its members before the legislative, executive, and judicial branches at the federal and state levels on matters of importance to townships and issues relating to the ability of township officials to perform their duties.

The Pennsylvania Municipal League ("PML") is a non-profit, non-partisan municipal association that has been assisting local governments throughout the Commonwealth for over 110 years. PML represents cities, boroughs, townships, and home rule municipalities by acting as an agent for cooperation and communication between local governments and the Commonwealth, and voicing common concerns before the legislative, executive, and judicial branches of federal and state governments. PML's 95-member municipalities comprise more than one-third of Pennsylvania's total population.

The Pennsylvania State Association of Boroughs ("PSAB") is a non-profit association that has been servicing and advocating the interests of Pennsylvania's 956 Boroughs since 1911. PSAB provides a unified voice on matters of public concern at the state and federal levels. It assists more than 16,000 elected and appointed borough officials across the Commonwealth with providing effective local government for both residents and taxpayers.

The Pennsylvania State Association of Township Commissioners ("PSATC") is a non-profit association comprised of townships of the first class. PSATC has been in existence for 92 years and currently has 68 members. PSATC advances the interests of first class townships—and home rule municipal corporations that were formerly first class townships—by promoting uniform, economical, and efficient methods of administering the affairs of their local governments.

Together, the associations described herein represent nearly all of the 2,600 municipalities in the Commonwealth. The Commenters further include Pennsylvania's largest city, second-largest city, as well as at least one representative from each additional type of municipality (i.e., third-class City, first-class township, second-class township, borough, and incorporated town) recognized by Pennsylvania law. While varying in their composition, location, and governmental processes, the named municipalities share one crucial commonality: they have all received wireless siting applications, most of which have been from Mobilitie, Inc. (hereinafter "Mobilitie") for the placement, construction, and/or modification of wireless facilities in the public rights-of-way.

By way of the following comments, the aforementioned associations and municipalities respectfully request that the Commission refrain from adopting the rules proposed by Mobilitie, because local right-of-way management is conducted solely by municipal governments in the Commonwealth of Pennsylvania; the majority of local governments in the Commonwealth have already developed and implemented a streamlined process for evaluating wireless facilities applications; right-of-way fees in Pennsylvania are not excessive, as they must be based on recovering costs incurred by municipalities; and, Mobilitie has neither cooperated nor acted in good faith in its dealings with Pennsylvania municipalities. Right-of-way management must be reserved to the local governments that have a legally mandated obligation to protect their citizens and to balance the need for wireless broadband service with the need to preserve the character of their communities.

1. Right-of-Way Management is Conducted Solely by Municipal Governments in the Commonwealth of Pennsylvania

Public rights-of-way are perhaps the single most significant asset managed by municipal governments in the Commonwealth.[1] Legally distinguishable from municipally-owned property (i.e., tracts of land assigned a parcel numbers) and open spaces (i.e., parks and other recreational areas), public rights-of-way are held in trust by municipal governments for the use and enjoyment of their residents. This "trust" created at law, and solidified through a wide breadth and tradition of Commonwealth case law, confers a legal duty upon municipal governments to regulate, maintain, operate, and oversee the public rights-of-way. This duty is not taken lightly by local

[1] It is worth noting here that municipalities in Pennsylvania do not *own* the public rights-of-way, as they do in many other states. Public streets and roads are treated differently from municipal land and structures.

governments, as much consideration and significant public funding is devoted to effective planning, management, and public safety of streets and roads.

Municipal governments in the Commonwealth are granted sole authority to manage rights-of-way in locally-maintained streets and roads. Pennsylvania law does not provide for entities *other* than local governments to exercise control over any aspect of the public rights-of-way, the one exception being the Public Utilities Commission.[2] Interpretation of such laws by the Pennsylvania Supreme Court makes clear that "maintenance of rights-of-way is within the ambit of the traditional exercise of municipal police powers" and therefore can be enjoyed only by municipalities of all types and sizes under the principal of *expressio unius est exclusio alterius*. PPL Electric Utility Corp. v. City of Lancaster, 125 A.3d 837, 851 (Pa. Comm. 2015).

It is well established law in the Commonwealth that a municipality's powers are broad and provide local governments with significant discretion in the exercise of these powers, especially in furtherance of residents' general welfare (i.e., preservation of the public rights-of-way and other public properties). The Pennsylvania Supreme Court has repeatedly found that "'general welfare clauses' have always been liberally construed to accord to municipalities a wide discretion in the exercise of the police power" and that the state Constitution affords municipalities "a grant of extremely broad [police] powers." Adams v. City of New Kensington, 357 Pa. 563, 55 A.2d 392 (Pa. 1947). These police powers are the legal basis for municipal right-of-way management and fee assessment.

As a matter of practice, nearly all municipalities in the Commonwealth employ a "roadmaster," "public works director," or dedicated "right-of-way manager" to manage their streets and roads. These highly-specialized positions exist because each municipality's rights-of-way are unique and must be managed on a local basis. The individuals who occupy these positons are intimately acquainted with their roadways, and are tasked with ensuring their maintenance and preservation. Insomuch as the State Legislature exercises control over local government processes and procedures, it does not regulate local rights-of-way or the infrastructure that is placed in them.[3]

Further federal intervention in the well-established local right-of-way management process with respect to wireless facilities is ill advised. First, it would undermine the rights and obligations granted to local governments under well-established Pennsylvania law and upheld by Commonwealth's courts. Second, as discussed below, neither Mobilitie nor any other wireless carrier or contractor has identified a genuine problem that requires further intervention by the Commission in this field. Third, imposing one-size-fits-all rules on individual municipalities that vary greatly in topography, character, zoning regulations, utility presence, etc. not only would fail to achieve the desired effect, but also would frustrate the goal of accelerated deployment of

[2] For example, the Third Class Cities Code provides that "cities, with or without any petition of property owners, may open, widen, straighten, alter, extend and improve, and may establish or reestablish the grades of, and keep in order and repair and in safe passable condition, any street, or any part thereof, within the city limits..." 53 P.S. §37915. Also, as to First Class Cities, See 53 P.S. §13802 and 53 P.S. §13131; as to Second Class Cities, See 53 P.S. §24351; as to Townships of the First Class, See 53 P.S. 57005; as to Townships of the Second Class, See 53 P.S. §67301; as to Boroughs, See 8 Pa.C.S. §1701, et seq.; and as to Incorporated Towns, See 53 P.S. §53401.

[3] The Commonwealth of Pennsylvania does, of course, have management authority over state roads.

wireless broadband service as local governments struggle to reconcile new federal mandates with their local approval processes.

Contrary to the unsubstantiated claims by Mobilitie in its Petition, Pennsylvania municipalities have a strong desire for improved wireless broadband connectivity and technological innovation. They are keenly aware that high speed broadband service is a key to economic development and a critical tool for academic progress. In order to facilitate the new wave of 5G technology, the Commenters recognize that new and/or improved wireless infrastructure is both necessary and welcome in their communities. However, the siting of new facilities, especially in the public rights-of-way, should not undermine public safety and the municipalities' credible judgment regarding the management and maintenance of their streets and roads.

As the Commission is well aware, Section 332(c)(7)(a) of the Telecommunications Act of 1996 (the "TA-96") specifically preserves local zoning authority over "the placement, construction and modification of personal wireless facilities." 47 U.S.C. §332(c)(7)(a). Additionally, Section 253 of the TA-96 explicitly states that local governments may impose specific requirements on wireless facilities to "protect public safety." 47 U.S.C. §253(b). These two provisions complement the fact that Pennsylvania municipalities are charged by state law with the oversight and maintenance of the health, safety, and welfare of their residents.[4] Municipalities actively manage the public rights-of-way via their public works and zoning departments in a competitively-neutral manner that promotes public safety and preserves the character of their communities.

On a more practical note, the regulatory processes currently in place in Pennsylvania municipalities have not created barriers to entry with respect to Mobilitie's (or any other entity's) placement of wireless facilities in the public rights-of-way. In fact, many municipalities in Pennsylvania are successfully working with Mobilitie right now to permit new wireless installations in the public rights-of-way. These municipalities include the City of Pittsburgh, which recently received applications for seventy (70) new sites; the City of Lancaster, which received applications for twenty-eight (28) new sites; and the City Lock Haven, which received applications for six (6) new sites. Each of these cities has been more than willing to permit the installation of wireless facilities in the public rights-of-way, provided Mobilitie adheres to reasonable local regulations.

2. Local Governments in Pennsylvania Have Developed a Streamlined Process for Evaluating Wireless Facilities Applications and It Is Mobilitie, Not These Governments, that Has Delayed the Process

Distributed antennas systems ("DAS") and other small-cell facilities have been present in Pennsylvania since at least 2012, when they were introduced into Northampton Township by American Tower Company. As such, municipalities in the Commonwealth have significant experience with wireless contractors and have updated their zoning codes to address smaller wireless technologies that are placed in the public rights-of-way. These updates have created a

[4] See Sayre v. Phillips, 148 Pa. 482 (Pa. 1892), in which the Pennsylvania Supreme Court discusses municipal police powers, their origins, and appropriate uses.

streamlined process that allows wireless contractors' applications to be processed in a reasonable time period by local governments, and with a minimal effort from the contractors (e.g., limited document requests and other regulatory requirements).

The regulatory approach employed by these municipalities requires only the most necessary information from wireless applicants placing their facilities in the public rights-of-way. Such an approach benefits not only the municipality, but it is also advantageous to the wireless applicant. When a municipality adopts a clear and well-structured wireless ordinance as part of its zoning code, the applicant is provided with an unambiguous set of written rules that apply directly to the technology it plans to deploy and the locations where it wishes to install its facilities.

First, simply by reviewing the pertinent section of the zoning code, an applicant knows in which rights-of-way the placement of facilities is permitted. He knows exactly which documents and information need to be provided to the municipality, as well as to which department it must submit its final application. Most importantly, the applicant knows which governing entity (i.e., council/board vs. zoning hearing board vs. building inspector) will be reviewing the completed application. This last piece is critical, because each governing entity has a slightly different approval process. Our law firm has represented over one hundred and twenty (120) Pennsylvania municipalities in amending their zoning ordinances to provide clear, reasonable standards for facilities being placed in the public rights-of-way. To the best of our knowledge, not a single one of these municipalities has denied the application of a wireless contractor seeking to install a facility in the public rights-of-way.

As far as the actual handling of applications is concerned, Mobilitie alleges that local governments are a hindrance to broadband deployment when it applies to siting new facilities in the rights-of-way, because they unreasonably delay the process. In Pennsylvania, Mobilitie's allegation is false because state law ensures that all zoning applications are processed within a specified time in the absence of federal timeframes. Under the Municipalities Planning Code, zoning hearing boards and municipal governing bodies are subject to stringent timeframes regarding the receipt and processing of a zoning applications. See, e.g., 53 P.S. §10908. Often, the state imposed timeframe is merely a few days longer than its federal counterpart, hardly hindering the speed at which the application will be processed.

The allegations of delay on the part of local governments are even more specious in light of the fact that the timeframe for reviewing Mobilitie's applications in most all instances are prescribed by Commission regulations and are observed by the Commonwealth's local governments. In most instances, Mobilitie's application either constitutes an "eligible facilities request," as defined by this Commission, or a tower structure that would fall under the prescribed timeframes in the Shot Clock Ruling. Indeed, the majority of Mobilitie's proposed wireless facilities are new towers, ranging from 80 to 120 feet in height in the public rights-of-way. By virtue of the fact that this Commission established timeframes of various lengths for certain types of facilities placements, there is a presumption on the part of the Commenters that such timeframes are reasonable and fair.

Moreover, the Commenters whose membership comprises some less dense locales and rural areas throughout the Commonwealth, urge the Commission to recognize that smaller

municipalities have limited staff resources to devote to wireless application processing. It is difficult for many of them to proceed under the timing rules imposed by the FCC and the Pennsylvania Municipalities Code; it would be nearly impossible for them to comply with even more restrictive timeframes, especially since Mobilitie submits siting applications in groups of up to 70 proposed facilities at once – a clear effort to push through requests without local oversight or vetting.

Finally, should the Commission decide to adopt shorter timeframes for application processing, the Commenters respectfully suggest that it establish timeframes for response on the part of the wireless applicant, as well. It has been our law firm's experience that, when municipalities attempt to work with Mobilitie to collect the required information for facilities siting in the public rights-of-way, Mobilitie takes months to answer communications from them, if Mobilitie answers them at all. These local governments have simply asked Mobilitie to demonstrate the need (i.e., gaps in coverage or capacity) it seeks to address in its applications. When Mobilitie fails to respond in a timely manner, or fails to respond at all, it delays the municipalities' processing of wireless applications.[5] As an aside, the Commenters find it curious that Mobilitie has petitioned the Commission to remedy delays that are not caused by local governments, but rather by the Petitioner itself.

3. As a Matter of Law, Right-of-Way Fees in Pennsylvania Must be Based upon Cost Recovery and are Reasonable

Section 253(c) of TA-96 permits local governments to charge "fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government." 47 U.S.C. §253(c). This Congressional prescription is consistent with municipalities' longstanding practice of assessing fees on entities utilizing the local public rights-of-way, which has been recognized and upheld by Pennsylvania state courts for over a century.[6] Pennsylvania law permits local governments to assess right-of-way fees on any company installing infrastructure in their streets and roads; however, such fees are only legal if they are based on a cost recovery model.[7] Courts have

[5] Municipalities should not be required to process an incomplete application for the siting of a tower when they harbor valid safety concerns regarding the placement or construction of the facility.

[6] There is an abundance of cases that uphold right-of-way occupancy fees on companies owning wires and other equipment located in the streets and roads. For example, the Pennsylvania Supreme Court in City of Philadelphia v. Holmes Electric Protective Co. of Philadelphia, 335 Pa. 273, 6 A.2d 884 (Pa. 1939) held that the City could charge a right-of-way occupancy fee to an alarm system company for maintaining wires under the City streets.

[7] With respect to fee assessment, our Supreme Court has stated: "As a consideration for permitting it to operate underground wires in the streets, the City could exact whatever payments in the nature of rentals it might deem proper…" Id. at 277. Also, the Court noted that it is an inarguable principle that municipalities are entitled to cost recovery with respect to facilities in the public rights-of-way: "This is a police regulation which has always been recognized and always will be. If expenses are incurred in the exercise of this police power someone must pay them, and it is only fair that the private corporation enjoying the franchise and serving the public for profit should bear this burden. ... [T]he reasonable cost of inspection during the entire year may be anticipated and an ordinance passed fixing the amount of an annual license fee with which to pay such expenses." Kittanning v. American Natural Gas Co., 239 Pa. 210, 212 (Pa. 1913). The exception to the cost recovery model, of course, is the assessment of franchise fees on cable operators, which fees may be up to five percent (5%) of the cable operator's gross revenues for cable services. *See,* Section 542 of the Cable Communications Act, 47 U.S.C. §542(b).

examined this issue at length and created a general set of recovery standards to which all municipalities must adhere.

Above all, the fees must be reasonable and non-discriminatory among providers of various services (i.e., gas, electric, telecommunications). Specifically, with respect to telecommunications providers, in PECO Energy Co. v. Township of Haverford, Civil Action No. 99-4766, 1999 U.S. Dist. LEXIS 19409 (E.D. Pa. 1999), the District Court for the Eastern District of Pennsylvania observed that

> [a] local government may demand compensation from telecommunications providers for their use of the public right-of-way. See 47 U.S.C. §253(c). Any fee, however, must be directly related to the company's use of the rights-of-way. … [In addition the Court recognizes] that local governments must charge right-of-way fees that are related 'either to a telecommunications company's use of the public rights-of-way or to a local government's costs of maintaining and improving its rights-of-way…'

Id., citing Bell Atlantic-Maryland v. Prince George's County, 49 F. Supp. 2d 805, 817 (D. Md. 1999). The Commenters request that the Commission recognize the status quo treatment of companies present in the public rights-of-way and permit municipalities to continue to recover their actual costs. All entities occupying the public rights-of-way, including public utilities, are subject to fee assessment; it would be unjust to exempt or otherwise limit fees imposed on Mobilitie and other wireless contractors if those fees are grounded in costs otherwise born by local governments directly related to wireless infrastructure. Indeed, the result would be that local taxpayers would effectively be subsidizing the wireless contractors.

More recently, the Pennsylvania Commonwealth Court examined the issue of right-of-way fee calculation and assessment in City of Lancaster, in which the local electric company alleged that the City's annual right-of-way management fee imposed upon all entities, both public and private, operating within the rights-of-way, was excessive and illegal. The City demonstrated, through a comprehensive right-of-way cost study, that all of its fees were based on the its actual costs. The study showed that the presence of infrastructure (i.e., poles, wires, boxes, etc.) along streets and roads creates significant costs for a municipality, including those related to permitting, street degradation, inspection and facilities monitoring, and road repair. The Court found that the City "has the legal ability to assess fees for recovery of costs" and that the "assessment of a reasonable fee for the recovery of costs incurred by the City expended in maintaining such rights-of-way" falls squarely within the City's police powers. City of Lancaster, 125 A.3d at 851

The assessment of fees based on a municipality's actual costs in managing the rights-of-way with respect to wireless contractors is inherently reasonable. We know of no instance in which a Pennsylvania municipality has imposed excessive or unreasonable fees on a wireless contractor. Indeed, the fees charged to wireless contractors by local governments are significantly less than fees charged by private property owners, which are market rate. Mobilitie's claim that municipalities impose excessive fees is simply unsustainable as applied to Pennsylvania municipalities.

In addition to the fees associated with ongoing right-of-way maintenance, various other situational costs related to the municipal review process, permitting, and inspections can be incurred when an application is submitted. In the experience of the Commenters, the most common "as needed" outside experts are engineers. For example, when a wireless applicant submits complicated technical information to corroborate its claim that the wireless facility must be sited where it is proposed in order to infill a gap in the applicant's wireless network, the technical information often proves to be too specialized for municipal staff to evaluate. As a matter of due diligence, a professional engineer may be employed to review the documents and confirm the applicant's claims and basis for installation.

This practice is quite common throughout the Commonwealth when unique and/or infrequent applications are submitted to municipalities. The applicant (often a natural gas company or construction firm operating pursuant to a use variance) typically reimburses the local government for funds expended in order to evaluate the application. There is no reason that Mobilitie or other wireless contractors should be discharged from the review process and reasonable fees to which all other companies lawfully operating in the public rights-of-way are subject.

4. Mobilitie Has Not Cooperated with Local Governments in the Application Process for Facilities in the Public Rights-of-Way

The Commenters caution that Mobiltie has proven repeatedly to be an uncooperative actor in the wireless arena with respect to local governments. The claims to the contrary averred in its Petition filed with the Commission are not supported by facts. See Petition for Declaratory Ruling filed by Mobilitie, LLC, WTB-16-421. Pennsylvania municipalities have a long history of maintaining an amicable working relationship with wireless contractors, such as Crown Castle, that seek to place infrastructure in the public rights-of-way. In fact, some of the first stealthed towers in the country were actually installed in the suburbs of Pittsburgh. However, this mutually cooperative relationship between the industry and local governments was disrupted when Mobilitie entered the scene.

As the Commission is aware, Mobilitie claims that it holds public utility status in most states by virtue of a Certificate of Public Convenience and Necessity ("CPCN"), alleging that it provides an "essential service."[8] Across the Commonwealth, Mobilitie has attempted to utilize this status to circumvent local zoning authority completely, claiming it has an unfettered right to install any facilities in any location in the municipalities' local rights-of-way.[9] Indeed, the same scenario plays out again and again: Mobilitie representatives contact a municipality and then bombard it with "cookie cutter" right-of-way use applications for the placement of wireless

[8] See page 4 of Mobilitie's Petition for Declaratory Ruling.

[9] Curiously, when speaking at the 2016 Annual Conference of National Association of Telecommunications Officers and Advisors ("NATOA"), Mobilitie representatives assured conference attendees that Mobilitie is "fine with reasonable zoning requirements" and would comply with them. Assuredly, this has not been the case in the Commonwealth of Pennsylvania.

facilities (typically, towers 70-120 feet tall and at times, for up to 70 facilities at once) in the public rights-of-way.[10]

The municipality responds quickly, advising Mobilitie to proceed through zoning, as there are requirements in place addressing wireless facilities in the public right-of-way. Since the municipality has public safety concerns regarding a 120-foot tower placed along a street in a densely-populated area, it requests more information as part of its responsive letter. Mobilitie declines to furnish any further information and incorrectly claims that it is not subject to municipal zoning because it has a CPCN. Mobilitie then refuses to cooperate in any way with the local government and cannot be reached for further discussion on the issue. Mobilitie's blatant disregard for the powers reserved for local governments pursuant to 47 U.S.C. §332(c)(7)(a) are evident in its dealings with municipal officials. These are not the actions of a company that operates in good faith.

Mobilitie is jeopardizing long term relationships between the wireless industry and local governments through its refusal to cooperate with local zoning regulations, its misleading characterization of its CPCN, and consistent failure to provide additional information when requested to do so. In addition, the majority of its proposed towers are excessively tall and create genuine public safety concerns. Mobilitie's lack of initiative to act in good faith is evidenced by the Pennsylvania Public Utility Commission's (hereinafter "PA PUC") opening of a proceeding to investigate whether a wireless contractor's public utility certification should be rescinded. The PA PUC initiated formal proceedings in part due to complaints it had received from Commonwealth residents reporting "instances where . . . DAS carriers have forced their way onto private property and municipal facilities using their PUC-issued [CPCN]."[11]

Most other wireless contractors operating in the Commonwealth attempt to work in partnership with local governments to achieve their goals. These companies recognize that Mobilitie's actions are harmful and ill-intentioned. In a recent issue of *The Pennsylvania Borough News*, George Asimos, Esquire, an attorney at Saul Ewing, LLP who represents the wireless industry in various capacities, published an article entitled, "Small Cell Tower Issues: Development of Small Cell Technology."[12] George Asimos, Small Cell Tower Issues: Development of Small Cell Technology, July 2016 Edition, 29-32 (2016). The article generally explains the need for small cell facilities, but also touches upon how the wireless industry itself views certain behavior within its own ranks. Mr. Asimos observes that

> Unfortunately, a few companies are now looking for ways to exploit the loose regulation of rights-of-way and avoid appropriate regulation of cell towers by installing small towers in places where regular towers would not normally be permitted. … For instance, there are recent reports from Virginia of companies installing small, substandard wooden poles with cellular antennas in highway rights-

[10] Mobilitie does not even attempt to individualize its applications on a per-municipality basis. It has been our law firm's experience that all of its applications are nigh identical.
[11] The PA PUC's discussion of DAS certification and Request for Comments are attached hereto as Exhibit 1.
[12] Mr. Asimos' cogent and explanatory article is attached hereto as Exhibit 2.

> of-way without seeking any permit, by claiming to be a public utility exempt from regulation, and avoiding payment of rent too.

Asimos, page 30. Mr. Asimos does not name the exploitative companies in his article; however, in the experience of the Commenters, Mobilitie is the only company that has been known to cause such problems and ignore municipalities as a matter of course. Frankly, it is Mobilitie's unresponsive and uncooperative behavior more than any other factor that has delayed the approval of wireless facility applications.

5. Conclusion

The Commenters strongly encourage and promote wireless broadband deployment across the Commonwealth of Pennsylvania; however, such deployment cannot be achieved at the expense of public safety or municipalities' proper management of their streets and roads. Regulations already exist in Pennsylvania that streamline wireless facilities deployment. The Commonwealth Municipalities Planning Code controls the timeframes and processing of wireless siting applications that are not covered by this Commission's Shot Clock Ruling or other Orders. Likewise, state case law provides that right-of-way fees in Pennsylvania must be based on a cost recovery model. Finally, local governments in Pennsylvania have amended their ordinances to address wireless facilities in the rights-of-way and to provide a clear set of regulations to obtain approval.

In short, municipalities are not hindering the deployment of wireless facilities in Pennsylvania. They stand ready to work with wireless contractors to meet industry's needs, as well as the broadband needs of municipal residents and businesses. We strongly urge the Commission not to further restrict municipal zoning authority over wireless facilities, impose unreasonable deadlines, and/or limit the assessment of fees on facilities in the public rights-of-way. The current system in Pennsylvania strikes the appropriate balance between the need to deploy wireless services quickly on the one hand, and the safety and preservation of the character of local communities on the other hand. We respectfully request that the Commission not take steps that will upset this fragile balance.

This concludes the comments of the Pennsylvania State Association of Township Supervisors, the Pennsylvania Municipal League, the Pennsylvania Association of Township Commissioners, the Pennsylvania State Association of Boroughs, the City of Philadelphia, the City of Pittsburgh, the City of Lancaster, the City of Lock Haven, the City of Warren, the City of Altoona, the Municipality of Monroeville, the Town of Bloomsburg, the Township of Bern, the Township of Richland (Allegheny County), the Township of Lower Allen, the Township of Wilkins, the Borough of Carlisle, the Borough of Hellertown, and the Borough of Selinsgrove. Thank you for the opportunity to submit these comments.

Respectfully submitted,

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